Part 201 Complexity Subgroup Meeting Summary

November 6, 2006
MSHDA
Lansing, Michigan

Work Group Members Present

See list at end of summary.

Staff Present

Carol Barish and Paul Zugger, Public Sector Consultants

Welcome and Introduction

The meeting began at 9:30 AM.

Paul Zugger from Public Sector Consultants welcomed the members of the Part 201 Complexity Work Group. Work group members, Department of Environmental quality (DEQ) staff, and others in attendance introduced themselves. Zugger thanked Bruce Jeffries, Michigan State Housing Development Authority (MSHDA), for hosting the meeting and Sharon Newlon, Dickinson Wright PLLC for providing lunch for the group. Zugger reviewed the agenda and the summary of the October 9, 2006, meeting. There were no suggested changes.

Zugger asked the group to consider whether we should also be looking at structural change as well as process changes. Zugger provided copies of the following documents for consideration by the Subgroup: *Conceptual Framework for Changing to an Environmental Cleanup Permit Program* by Alan Wasserman, and *The Massachusetts Waste Site Cleanup Program*, Massachusetts Department of Environmental Protection.

Review and Discussion of Ideas from October 9, 2006 Meeting

Zugger requested Chuck Hersey and Rebecca Yedlin to lead a discussion of the issues raised in the October meeting. A handout of the SEMCOG (Southeast Michigan Council of Governments) ideas was distributed.

Chuck Hersey and Rebecca Yedlin reviewed specific ideas from the first meeting. The 201 program would be improved if the majority of resources were focused on the truly complex projects and less was devoted to the simpler ones. The 80/20 rule would indicate that about 80 percent of the projects would fall into a less complex category and should demand 20 percent of the collected resources, while the remaining 20 percent of projects would be the more complex ones that would demand 80 percent of the resources. Some members believe the current 201 program does not follow this rule, and that often the less important and simpler problems actually command an inordinate amount of resources and time.

One way to move toward an 80/20 split is to improve the front end of the process. Through the use of a screening tool or check list, establish an expedited approach using early consultation and preliminary agreements to simplify the remediation decisions.

DEQ indicated that while an 80/20 split on project complexity probably already exists, the less complex sites still demand considerable attention. All projects need to be managed to protect for all exposure pathways, and when the desired approach is to leave contamination in place, public health protection has to be assured through restricting land uses and/or exposure pathways, and this makes the final remediation plan more complex.

A member pointed out that the indoor air and the groundwater/surface water interface (GSI) pathways often drive the complexity of the resolution. DEQ noted that when other pathways that would normally be controlling (drinking water protection, direct contact) are eliminated through risk management approaches, the more complex pathways like indoor air and GSI remain and end up driving the cleanup criteria.

While owners would like to know what to expect up front, and the use of a screening tool, early meetings, or early agreements could reduce complexity, adequate site characterization is still a major hurdle. It is difficult to determine whether a site is simple or complex when site information is incomplete. It is difficult for parties to know if they have enough information to go to the agency for a determination of pathways.

DEQ noted that the biggest problem in reaching agreement is not in determining the controlling pathway, but the site characterization. Site characterization is needed for Remedial Action Plans (RAPs) as well as for due care decisions.

A member pointed out that site characterization is usually problematic. For example, you have a 10-acre parcel with some contamination data and some groundwater data. Do you know enough to go to the agency for a pathways determination? This is a common situation. You really do not know if the site is simple or complex. A checklist and early consultation would be helpful, but you often need more data to even make any preliminary decisions.

It was suggested to refer the issue of minimum standards for site characterization to the Administration Subgroup for consideration. This issue would also be of interest to the Liability Subgroup. Zugger will follow up with those subgroup chairs to see which subgroup should take the lead on this issue.

A member raised the issue of a property owner wanting to address a specific problem, for example, a trichloroethylene (TCE) spill. The property owner wants to remediate this problem promptly. However, when the owner pursues DEQ approval of a response action, the DEQ may often want a complete site investigation. As a result, the process gets stopped, and the TCE leak is not promptly addressed. The DEQ indicated that there may be approaches appropriate to this situation similar to those used in tank cleanup situations. Zugger asked Fred Dindoffer to develop a specific recommendation on this issue for follow-up on the TCE problem at the next meeting.

There was consensus that the subgroup should pursue developing a checklist approach to help expedite the front end of the process. Specifically, a mechanism to narrow the issues

and secure up front agreements with the DEQ on pertinent issues, such as the extent of the "facility," data collection needs, and required pathway assessments. One possible mechanism to help accomplish this approach would be a screening tool or questionnaire to guide the parties in narrowing the issues and expediting the process. As a result of the discussion, a small group was assigned to develop a potential checklist document for review at the next meeting. The group will consist of Richard Barr (chair), John Frankenthal, Patty Brandt, Bob Wagner, and Brad Venman.

A member pointed out that site-specific solutions drive complexity. Can we have generic criteria that could more readily be used for the simpler sites, providing the owner with a simple solution option? Zugger suggested that this issue be saved as a "parking lot" issue for further discussion: Generic criteria for simple site cleanups.

The DEQ pointed out that in trying to reach a balance between certainty and expeditious decision making, an issue driving conservatism is that the DEQ, by statute, only has "one bite of the apple." In denying any plan (work plan, site remediation plan, remedial action plan, etc.) the DEQ must list all the concerns it has, with no option of raising additional concerns or issues at a later date. Zugger asked the group to consider whether this issue presents a structural concern we should consider.

Part 31 and the Groundwater/Surface Water Interface (GSI) Pathway

Patty Brandt and Andy Hogarth gave a PowerPoint presentation of this issue. Copies of the presentation were provided. Bill Creal, Water Bureau Permit Section Chief, DEQ, was present to answer questions.

Discussion began with the question of when the GSI pathway is relevant. According to the Part 201 Rules, the GSI pathway is relevant when a remedial investigation or application of best professional judgment leads to the conclusion that groundwater contaminants will vent to surface waters in concentration that exceeds generic GSI criteria (Part 31 WQS).

There was discussion of monitoring locations. GSI monitoring points are defined as vertical wells at locations in the saturated zone that are representative of groundwater entering surface water. Mixing zone–based criteria, once calculated, apply at the well. A member suggested that there should be an option to monitor the impacts on the surface water, not at groundwater monitoring wells. The group discussed GSI impacts on wetlands. These must be considered if the groundwater flows into a wetland. If the wetland flows into the groundwater (a groundwater recharge area), the GSI pathway is not relevant since no impact from contaminated groundwater on the wetland would be expected.

Groundwater flowing to surface waters via storm sewers is a special case, and is regulated dependant upon the applicability of Part 31 storm water regulations. This topic will be discussed at the next meeting.

Underground utility corridors can be a GSI pathway because they are backfilled with permeable material that can intercept a contaminated groundwater plume and divert it to surface waters.

Members raised concerns that GSI predictions are based on worse-case assumptions and felt that there should be a process to demonstrate that these assumptions are not representative of the site in questions. The group discussed how and when there could be a utility corridor "off ramp", a process by which a party can demonstrate that the GSI pathway in a specific situation need not be considered. Things to be considered in such a demonstration would be the distance to the corridor, size of source, volume and flow rate of the plume, receiving water flow, mass of contaminants on site, etc.

Zugger requested that Allen Reilly and Sharon Newlon to develop a draft of an off-ramp procedure for situations involving utility corridor GSI pathways for consideration at the next meeting.

Mercury Multi-discharger Variance

Bill Creal, DEQ, discussed the multi-discharger variance procedure for Mercury under Part 31. The water quality criterion for mercury is 1.3 parts per trillion (ppt.). The variance allows a discharge up to 10 ppt. The variance requires the discharger to meet attainable levels of mercury in the discharge and to develop and implement a mercury minimization plan. The rule states that a variance can only be granted via an NPDES permit. The group discussed whether the rule could be modified to allow a variance for facilities regulated under the Part 201 program, for example, facilities that have an approved RAP, but not an NPDES permit. Bill Creal advised that there is some question whether the federal EPA requirements will impact this. He will research this and report back to the group.

Next Steps

Topics/issues to be discussed at the next meeting include:

Reports from the three assignments:

- A check list to help in narrowing issues and securing up front agreements
- An approach to expedite DEQ approval of remediation actions for single-issue problems, such as a TCE spill, without involving the whole site.
- An "off ramp" process to demonstrate that the GSI pathway related to underground utility corridor need not be considered.

- GSI procedures for plumes flowing into storm sewers covered by NPDES Storm Sewer permits (the illicit discharge issue)
- Mercury variance for facilities regulated under Part 201 but without an NPDES permit
- Indoor air pathway – summary presentation: How? Why? Alternatives

Future meeting issues:

- Continued discussion on remediation complexity
- Reduce land use options
- Proposals for simplifying criteria
- Review and discussion of possible structural changes, such as consideration of a permit approach (Wasserman write-up; MA approach)

- Generic criteria versus site-specific criteria, and how to make the use of site specific easier

Next Meeting

December 11, 2006, from 9:30 AM to 3:00 PM at the MSHDA offices located at 735 E. Michigan Avenue in Lansing.

Part 201 Complexity Subgroup
Meeting: October 9, 2006

Participants

Name	***Organization***
John Barkach	Great Lakes Environmental Center
Richard Barr*	Honigman Miller Schwartz & Cohn
Patty Brandt*	RRD – Executive Section
Jeff Crum	Hamp, Mathews & Assoc., Inc
Fred Dindoffer	Bodman LLP
Christine Flaga*	MDEQ – RRD
John Frankenthal*	Atlantic Richfield Company
Chuck Hersey*	SEMCOG
Andy Hogarth	DEQ
Bruce Jeffries*	MSHDA
Christene Jones*	Barr Engineering
Gary Klepper	Conestoga-Rovers & Associates
Vincent Nathan*	City of Detroit
Sharon Newlon*	Dickinson Wright, PLLC
Tom O'Connell*	ERM
Allen Reilly*	Horizon Environmental
Frank Ruswick	Department of Environmental Quality
Brad Venman*	NTH Consultant
Robert Wagner*	RRD - Gaylord District Office
Sharon Woolman*	The Dow Chemical Company
Rebecca Yedlin	SEMCOG

- Subgroup Members

Others Present
Karen East, Legislative Service Bureau, Research Services